

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 713 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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PREMLATABEN K THAKKAR

Versus

STATE OF GUJARAT  
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Appearance:

MR KG VAKHARIA for Petitioner  
MR SUDHANSHU PATEL, AGP for Respondents No. 1, 4  
NOTICE SERVED for Respondent No. 2 & 3  
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CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 25/02/2000

ORAL JUDGEMENT

By means of filing this petition under Article  
226 of the Constitution, the petitioner has prayed to  
issue a writ of mandamus or a writ of certiorari or any

other appropriate writ, order or direction to quash and set aside order dated November 10, 1987 passed by the State of Gujarat, whereby order dated May 10, 1982 passed by the City Survey Superintendent, Bhuj holding that the petitioner has not encroached upon 34 gunthas of revenue Survey No.121 situated at Bhuj, is set aside and a direction is given to examine the matter under section 37(2) of the Bombay Land Revenue Code.

2. The petitioner is owner of revenue survey no.121 situated within the limits of Bhuj City. In the year 1967-68, lands were measured during the city survey at the time of settlement of survey of Bhuj city and it was found that the petitioner was in unauthorised possession of land admeasuring 34 gunthas. The petitioner had shown her inclination to pay premium amount for the excess land and, therefore, Deputy Collector, Bhuj after determining premium amount, regularised her occupation of 34 gunthas of revenue survey no.121 by order dated February 16, 1982. The said order is produced by the petitioner at Annexure-C to the petition. The petitioner paid premium amount determined by the Deputy Collector, Bhuj and the so-called encroachment was regularised. Respondent no.3 i.e. City Survey Superintendent, Bhuj initiated encroachment proceedings against the petitioner. The petitioner pointed out the relevant facts including the fact that her objection to allot the land to All India Radio was upheld by the State Government and, therefore, encroachment proceedings should be dropped. In the encroachment proceedings, the record keeper of District Inspector of Land Record, Kutch at Bhuj was examined on behalf of the State Government who, inter-alia, admitted that there were erasures in the map and tracing regarding land of the petitioner. After taking into consideration the record of the case, City Survey Superintendent, Bhuj, District : Kutch by his order dated May 10, 1982 held that there was no encroachment. The order of respondent no.3 is produced by the petitioner at Annexure-B to the petition. Thereafter, respondent no.2 i.e. Mamlatdar, Bhuj preferred revision application before the State Government on August 27, 1984 against order dated May 10, 1982 which was passed by the City Survey Superintendent, Bhuj. The Government in exercise of powers under section 211 of the Bombay Land Revenue Code ("the Code" for short) has set aside the order of the City Survey Superintendent, Bhuj and has directed the competent authority to examine the matter under the provisions of Section 37(2) of the Code by order dated November 10, 1987 giving rise to the present petition.

3. It may be stated that during the pendency of

petition, notice dated July 18, 1988 was served by the Collector, Kutch at Bhuj calling upon the petitioner to show cause as to why order dated February 16, 1982 regularising occupation of 34 gunthas of survey no.121 should not be set aside. On application being submitted, the petitioner was permitted to amend the petition. Accordingly, the petition is amended and the petitioner has also challenged the said show cause notice.

4. The learned Counsel for the petitioner submitted that the occupation of 34 gunthas of survey no.121, by the petitioner was regularised by the Deputy Collector, Bhuj vide order dated February 16, 1982 on payment of premium and, therefore, notice dated July 18, 1988 calling upon the petitioner to show cause as to why that order should not be set aside, should not have been issued after lapse of about more than six years. It was submitted that in view of order dated February 16, 1982 regularising occupation of the petitioner of survey no.121, City Survey Superintendent, Bhuj was justified in holding that there was no encroachment and, therefore, the said order should not have been revised by the State Government by the impugned order. What was claimed was that even order passed by the State Government under section 211 of the Code is also after unreasonable period and, therefore, the petition should be accepted.

5. Mr. Sudhanshu Patel, learned A.G.P. submitted that the order dated February 16, 1982 passed by the Deputy Collector, Bhuj regularising occupation of 34 gunthas was illegal and, therefore, Collector, Kutch Bhuj was justified in issuing notice dated July 18, 1988 calling upon the petitioner to show cause as to why the said order should not be set aside. It was claimed that order of City Survey Superintendent dated May 10, 1982 holding that there was no encroachment, was found to be erroneous by the revisional authority and as the revisional authority was justified in setting aside the same and in directing the competent authority to decide the matter in the light of provisions of section 37(2) of the Code, petition should be dismissed. The learned Counsel for the respondents emphasised that the powers have not been exercised after undue delay and, therefore, the petitioner should not be granted the relief claimed in the petition.

6. I have heard the learned Counsel for the parties and taken into consideration the documents produced on the record of the case. It is an admitted fact that by an order dated February 16, 1982, possession of the petitioner of the land which was found to be in excess,

was regularised by the Deputy Collector, Bhuj vide order dated February 16, 1982. The petitioner was called upon to make payment of premium and accordingly the petitioner had paid the amount of premium on September 1, 1981. Since then the petitioner is in possession and is enjoying the land in question. If the Collector was of the opinion that regularisation was contrary to Government Resolution dated May 7, 1977 and related to encroachment willfully made, he should have initiated appropriate proceedings under section 211 of the Code within reasonable period. It is relevant to notice that after filing of the petition, notice dated July 18, 1988 was served on the petitioner calling upon her to show cause as to why order dated February 16, 1982 regularising occupation of excess land should not be set aside. Having regard to the facts and circumstances of the case, it cannot be said that powers under section 211 of the Code are sought to be exercised within reasonable period. Though powers under section 211 of the Code can be exercised at any time, it should be exercised within reasonable time. What is a reasonable time, depends upon facts and circumstances of each case. Merely because section 211 of the Code does not prescribe any period of limitation, it does not mean that powers under that provision can be exercised after any length of time. Before regularising possession of the petitioner, the petitioner was called upon to pay amount of premium and accordingly, premium was paid by her on September 1, 1981. Copy of the order dated February 16, 1982 was forwarded to Collector, Kutch, Bhuj and other authorities. Therefore, if the Collector, Kutch- Bhuj was so minded, he could have exercised powers under section 211 of the Code within reasonable time of receipt of the order of the Deputy Collector. It is well settled that date of knowledge of the order of Deputy Collector to the Collector would be relevant while deciding the question whether powers under section 211 of the Code are sought to be exercised within reasonable time. It is not the case of the Collector that he learnt about the order dated February 16, 1982 only in the month of July 1988. Therefore, there is no manner of doubt that by issuing notice dated July 18, 1988, Collector has tried to invoke powers available to him under section 211 of the Code after an unreasonable period. The result is that, the said notice being illegal is liable to be quashed. Once it is held that exercise of powers by the Collector under section 211 after lapse of about more than six years is illegal, it means that order dated February 16, 1982 regularising occupation of excess land which was found to be in possession of the petitioner, will have to be upheld. In view of this order dated February 16, 1982,

City Survey Superintendent, Bhuj was justified in concluding that there was no encroachment on land bearing survey No.121 by the petitioner. The State Government in exercise of powers under section 211 of the Code could not have set aside the order of the City Survey Superintendent, Bhuj by holding that no inquiry as contemplated under section 37(2) of the Code was held before regularising possession of excess land. The regularisation proceeded on the footing that land belonging to the State Government was in unauthorised possession of the petitioner, but having regard to the facts of the case and in view of the willingness on the part of the petitioner to pay premium, the Deputy Collector had regularised unauthorised occupation by calling upon the petitioner to pay premium. Under the circumstances, no inquiry was necessary to be made as contemplated by section 37(2) of the Code. The result is that the petition will have to be accepted.

For the foregoing reasons, petition succeeds. Order dated November 10, 1987 passed by the State of Gujarat in exercise of powers under section 211 of the Code setting aside order dated May 10, 1982 of the City Survey Superintendent, Bhuj is hereby set aside and quashed. Similarly, notice dated July 18, 1988 issued by the Collector, Kutch- Bhuj under section 211 of the Code calling upon the petitioner to show cause as to why order of regularisation passed on February 16, 1982 should not be set aside, is also hereby set aside and quashed. Rule is made absolute accordingly, with no order as to costs.

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(patel)